

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

IN RE Mortgage Electronic Registration  
Systems (MERS) Litigation

MDL DOCKET NO. 09-2119-JAT

**AMENDED ORDER**

This Order Applies to:

CV 10-401-PHX-JAT  
CV 10-413-PHX-JAT  
CV 10-415-PHX-JAT

The Court now addresses three actions<sup>1</sup> transferred by the Judicial Panel on Multidistrict Litigation (the "Panel") in MDL Conditional Transfer Order (CTO-2) and Simultaneous Separation and Remand of Certain Claims (Doc. 107). In the conditional transfer order, the Panel stated, "All claims in these actions that are unrelated to the formation and/or operation of the MERS system are separated and simultaneously remanded, under 20 USC 1407, to the District of Nevada." Mortgage Electronic Registration Systems, Inc. and MERSCORP, Inc. (collectively, "MERS" or "Moving Defendants") and various

<sup>1</sup> Listed below are the first plaintiff's name and the original jurisdiction case numbers for the cases addressed herein:

<u>First Plaintiff's Name</u>	<u>Arizona Case Number</u>	<u>Original Jurisdiction Case Number</u>
<i>Huck</i>	CV 10-401-PHX-JAT	3:09-553 (D. Nev.)
<i>Gillespie</i>	CV 10-413-PHX-JAT	3:09-556 (D. Nev.)
<i>Caffee</i>	CV 10-415-PHX-JAT	3:09-641 (D. Nev.)

1 other parties have set forth which claims, if any, in each of the various cases relate to the  
2 formation and/or operation of MERS.

3 After transfer to this MDL, Plaintiffs sought and received leave to amend their  
4 complaints. Moving Defendants then filed a Motion to Remand Claims from these amended  
5 complaints (Doc. 1096). Certain Defendants filed a response to the Motion to Remand (Doc.  
6 1138). MERS replied (Doc. 1152).

### 7 **I. Claims on Which the Parties Do Not Agree**

8 Within these “tag-along” actions there are several types of claims over which the  
9 parties disagree. Where the parties agree as to the proper determination of a claim, the Court  
10 adopts the parties’ determination.

#### 11 **A. Fraud in the Inducement**

12 The parties disagree about the status of claims for fraud in the inducement in *Caffee*  
13 (Tenth Claim), *Gillespie* (Tenth Claim), and *Huck* (Tenth Claim). Moving Defendants argue  
14 that all of these claims have been transferred to the MDL. Certain Defendants argue that the  
15 claims have been split with part of each claim transferred to the MDL and part of each claim  
16 remanded to the respective transferor court.

17 Each of these claims contains allegations that relate to the operation of MERS and  
18 allegations unrelated to the operation of MERS. While either the MERS-related  
19 misrepresentations or the non-MERS-related misrepresentations could each be logically  
20 sufficient to establish liability, it may be that only all of the misrepresentations together were  
21 sufficient to induce the plaintiffs to enter the contract. Thus, these claims cannot be split  
22 and—as at least some of the allegations relate to the operation and formation of  
23 MERS—these claims have been transferred in their entirety to the MDL.

#### 24 **B. Fraud Through Omission**

25 The parties disagree about the status of claims for fraud through omission in *Caffee*  
26 (Ninth Claim), *Gillespie* (Ninth Claim), and *Huck* (Ninth Claim). Moving Defendants argue  
27 that these claims have been transferred to the MDL, while Certain Defendants argue that  
28

1 these claims have been split with part of each claim transferred to the MDL and part of each  
2 claim remanded to the respective transferor court.

3 Just as with the fraud in the inducement claims above, the fraud through omission  
4 claims cannot be severed. Therefore, these claims have been transferred in their entirety to  
5 the MDL.

6 **C. Violation of the Covenant of Good Faith and Fair Dealing**

7 The parties disagree about the status of claim for violation of the covenant of good  
8 faith and fair dealing in *Caffee*. The Court finds that the *Caffee* complaint does not contain  
9 any allegation making this claim rest on the operation of MERS. Therefore, the claim is  
10 remanded in full.

11 Accordingly,

12 **IT IS ORDERED** that the Motion to Remand Certain Claims (Doc. 1096) is  
13 GRANTED as follows:

14 With respect to *Caffee*, *Gillespie*, and *Huck*, claims 7-10 and part of claims 1-5  
15 and 14 remain with the undersigned as part of the MDL and claim 6 and part of claims 1-5  
16 and 14 have been remanded to the transferor court.

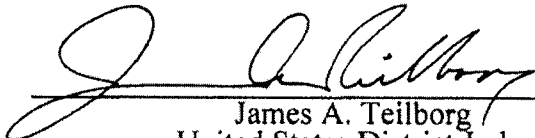
17 **IT IS FURTHER ORDERED** that MERS shall file a copy of this Order with each  
18 transferor court within the next two business days.

19 **IT IS FURTHER ORDERED** that the Clerk of the Court shall file a copy of this  
20 Order in each member case listed on page 1.

21 **IT IS FURTHER ORDERED** that with respect to any claims that are staying with  
22 this Court, Plaintiffs' Lead Counsel shall file a proposed consolidated amended complaint  
23 together with the various plaintiffs whose actions are currently joined to this MDL and  
24 Defendants need not answer or otherwise respond until such a consolidated amended  
25 complaint is deemed filed; with respect to any claims that have been remanded to the  
26 transferor courts, Defendants shall answer or otherwise respond to those claims within fifteen  
27 days of this Order, unless any order of the transferor court is inconsistent with this Order, in  
28 which case, the order of the transferor court shall control.

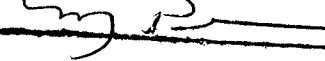
1       **IT IS FURTHER ORDERED** within 12 days of this Order, MERS shall file all  
2 documents related to a case bifurcated herein into the record of the transferor court in that  
3 particular case. (Because this Court will not transfer the entire MDL file and docket to any  
4 individual transferor court, this will insure the Judge in the transferor court has a complete  
5 record for that specific case).

6       DATED this 5th day of May, 2011.

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9         
10       James A. Teilborg  
11       United States District Judge

12       I hereby attest and certify on 5.6.11  
13       that the foregoing document is a full, true and correct  
14       copy of the original on file in my office and in my cus-  
15       tody.

16       CLERK, U.S. DISTRICT COURT  
17       DISTRICT OF ARIZONA

18       By  Deputy  
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